



STATE BOARD OF EQUALIZATION

October 27, 1964

Mr. R--- A. C---
A--- M---
XXX --- --- Drive
---, California

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Dear Mr. C---:

Our audit staff has informed us that you desire a legal opinion on the tax liability disclosed by an audit of your records on June 15, 1964.

It is our understanding that you are primarily concerned with the application of the Sales and Use Tax Law with respect to transactions involving horses. More specifically, you question the application of the tax on sales of horses wherein you had only a partial interest. Section 6051 of the Sales and use Tax Law imposes sales tax on retailers for the privilege of selling tangible personal property at retail. The tax is imposed on the seller of the property, and not necessarily on the owner of the property sold, unless, of course, the seller also happens to be the owner. Therefore, since you are a retailer as defined under § 6015 of the Sales and Use Tax Law, you become liable for the sales tax on all sales made by you.

You also question the application of the use tax on race horses purchased outside of California but first raced or foaled in California. Section 6201 of the Sales and Use Tax Law imposes a use tax on property purchased from an out-of-state retailer for use in California. In each case it is a question of fact whether the property was purchased for use in California when there has been a prior use outside of California. With respect to race horses, it has been our position that if a horse is first raced in California there is a presumption that it was purchased for use in California. Racing of a horse constitutes a use within the meaning of § 6201. Whether the use tax applies to horses foaled in California is also a question of fact. If the horse was first foaled in California there is a presumption that it was purchased for use in California. This presumption can be overcome by a showing of substantial use outside the state before being brought into this state.

Mr. R--- A. C---
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It is our understanding that the audit staff has applied the sales and use tax on horse transactions in accordance with the above opinion. If you desire further information, feel free to let us know.

Very truly yours,

E. H. Stetson
Tax Counsel

By _____
Alvin R. Wohl

ARW:mm
cc: Pasadena – Subdistrict Administrator